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OFFICE OF PETITIONS

In re Application of :
David R. Cheriton :
Application No. 10/626,792 : ON PETITION
Filed: February 23, 2011 :
Attorney Docket No. CIS0192US :

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed February 23, 2011.

The petition under 37 CFR 1.181 is GRANTED.

The above-identified application became abandoned for failure to timely pay the issue fee in response to the Notice of Allowance mailed October 28, 2010. This Notice set a statutory period for reply of three (3) months. No issue fee having been received, the application became abandoned on January 29, 2011. The Office mailed a Notice of Abandonment on February 10, 2011.

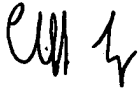
Petitioner states that he did not receive the Notice of Allowance. In support thereof, petitioner has included a copy of docket report for the attorney in question, showing all of his replies docketed for a due date of January 28, 2011. In addition, petitioner has included a copy of the application filing jacket. Petitioner states that he does not have a copy of a master docket report showing all of the firm's replies docketed for a due date of January 28, 2011.

To establish nonreceipt of an Office action, a petitioner must: 1) include a statement that the Office action was not received; 2) attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and 3) include a copy of the docket record where the nonreceived Office action would have been entered had it been received and docketed.¹ A proper docket report consists of a "docket record where the nonreceived Office action would have been entered had it been received and docketed."² "For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket record showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted..."³

In view of the evidence submitted on petition, it is concluded that petitioner has established that he did not receive the October 28, 2010 Notice of Allowance.

The application is being forwarded to Group Art Unit 2473 for re-mailing of the October 28, 2010 Notice of Allowance, setting a new period for reply.

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.



Cliff Congo
Petitions Attorney
Office of Petitions

¹ See MPEP 711.03(c) (II).

² MPEP 711.03(c) (II) (emphasis added).

³ Id.